



VOSH PROGRAM DIRECTIVE: 02-009A

ISSUED: April 1, 2003

SUBJECT: Prison Inmate Form Letter

A. Purpose.

This directive updates procedures for handling workplace safety and health complaints filed by prisoners in Virginia correctional institutions and local government prisons and jails.

This program directive is an internal guideline not a statutory or regulatory rule and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies VOSH-wide and specifically to VOSH Compliance Managers.

C. Reference.

VOSH Field Operations Manual, Appendix A.

D. Cancellation.

VOSH Program Directive 02-009 (April 6, 1987).

E. Action.

Directors and Managers shall ensure that the procedures set forth in section I., Procedures of this directive are adhered to in addressing workplace safety and health complaints filed by prisoners in Virginia correctional institutions and local government prisons and jails.

F. Effective Date.

April 1, 2003.

G. Expiration Date.

Not applicable.

H. Background.

VOSH occasionally receives complaints from prisoners in Virginia correctional institutions, but had no established policy for addressing the complaints. The definition of “employee” in §10 of the VOSH Administrative Regulations Manual (ARM) (full reference: 16 VAC 25-60-10 *et. seq.*) provides that “[p]risoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to §§53.1-60 or 53.1-131 of the Code of Virginia.”

With the aforementioned exception, VOSH has no jurisdiction regarding conditions to which prisoners are exposed in Virginia correctional institutions or local government prisons and jails. However, experience indicates that oftentimes when prisoners are exposed to hazardous working conditions, correction personnel may also be exposed to the same conditions. Therefore, VOSH will provide the information contained in complaints to the appropriate correction and local government personnel for action in accordance with section I. Procedures below.

I. Procedures.

Upon receipt of a complaint from a prisoner, the appropriate Compliance Manager shall:

1. Evaluate the complaint to determine if the hazardous conditions alleged involve a work-release program under §§53.1-60 or 53.1-131. Consultation with the Regional Director may be necessary to make this determination.
2. If the complaint does not involve one of the work-release programs, send the form letter attached as Appendix A to the prisoner and the form letter attached as Appendix B to the correctional institution or jail involved who will have 10 days to investigate the complaint and respond to VOSH.
3. Have the option to do a VOSH investigation if correction officials fail to respond in 10 days.
4. If the complaint does involve one of the covered work-release programs, follow the complaint processing procedures in the FOM.

J. Summary.

Prison inmates who work within the prison are not considered to be public employees (unless they participate in a work-release program). This means that if they register a complaint with VOSH regarding hazardous conditions of their workplace, this will not result in an inspection. However, correction officials are given 10 days in which to do their own investigation, take action if a hazard is found, and then respond to VOSH. If the officials fail to respond within 10 days, VOSH may then investigate.

If inmates participate in a work-release program, the complaint processing procedures of the FOM are used.

C. Ray Davenport
Commissioner

Attachment: VOSH Field Operations Manual, Appendix A, Form Letter for Prisoners

Distribution: Commissioner of Labor and Industry
Directors and Compliance Managers
VOSH Compliance Staff
Cooperative Programs Staff
Legal Support Staff
OSHA Regional Administrator, Region III
OSHA Regional Office, Norfolk

SAMPLE LETTER -- Response To Inmate or Prisoner Complaint

Date

Name

Address

City, State Zip

Dear :

This letter is being written in response to a complaint recently received from you regarding a hazardous condition in your area at the _____ Correctional Center. Your letters were sent to _____ in our _____ office, and he in turn forwarded them to this office which is the jurisdictional area for the _____ Correctional Center.

I wish to assure you that the Commissioner takes great interest in all complaints which allege unsafe working conditions. Indeed, complaint-initiated inspections are considered a high priority by the Virginia Occupational Safety and Health (VOSH) Program. However, in accordance with the Code of Virginia (see paragraph below), VOSH is limited as to the actions it can take in circumstances such as yours.

Section 40.1-2.1 of the Code of Virginia specifically provides:

The provisions of this title and any rules and regulations promulgated pursuant thereto shall not apply to the State or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Safety and Health Codes Board.

While the Safety and Health Codes Board (the Board) extended VOSH's enforcement authority over "public employees", VOSH regulations are not applicable to prisoners confined in jails. Section 10 of the VOSH Administrative Regulations Manual defines an "employee" as: **"an employee of an employer who is employed in a business of his employer"** therefore, **prisoners confined in prisons or jails in the Commonwealth are not public employees unless employed by a public employer in a work-release program pursuant to § 53.1-60 or § 53.1-131 of the Code of Virginia.**

As an agency, VOSH is generally limited to initiating an on-site complaint inspection in response to a formally written complaint from a current employee or from the immediate family of a current employee. All other complaints whether received from a former employee or from other concerned persons regarding unsafe working conditions are generally processed as investigation requests by contacting the employer and sending a letter to the employer that requests a written response within 10 working days. Since the circumstances you describe are not related to exposure to unsafe working conditions as a result of being employed by a public employer in a work-release program, your complaint is categorized as an investigation request and an on-site inspection of the condition you have described is not planned at this time.

However, a letter has been sent (see copy attached) to _____, Warden, detailing the hazardous condition which you are concerned about. This letter does not disclose your identity and will serve

Appendix A

to bring the alleged hazardous condition to the attention of the institution officials for their consideration and possible corrective action if warranted.

Please note also that VOSH, as a program of a state agency, is not authorized to represent private individuals in personal claims. VOSH is responsible for conducting safety inspections and accident investigations to determine if employees are exposed to unsafe or unhealthy working conditions as defined by the Virginia Occupational Safety and Health Standards. In the course of these inspections, if it is determined that an employer has violated the VOSH standards, we issue citations to the employer which, depending upon the classification of the violations, may result in monetary fines.

Please contact me if you have any further questions concerning this matter.

Sincerely,

VOSH Compliance Manager

Attachment

APPENDIX B: FORM LETTER FOR CORRECTION PERSONNEL

DATE

ADDRESS

Dear (Correction Official):

On (date), this Department received a complaint concerning alleged unsafe conditions at (name of prison or institution). The specific nature of the complaint involves: (describe alleged hazard(s) and location(s))

- 1.
- 2.
- 3.
- 4.
- 5.

Although our jurisdiction only extends to correctional personnel and to prisoners “employed by a public employer in a work-release program pursuant to §§53.1-60 or 53.1-131 of the Code of Virginia.” (§10 -- definition of ‘Public Employer,’ Virginia Occupational Safety and Health (VOSH) Administrative Regulations Manual); it has been our experience that often, when prisoners are exposed to hazardous conditions, correctional personnel may also be exposed to the same condition.

We have not determined whether the hazard, as alleged, exists at your workplace; and we are not conducting an inspection at this time. However, since allegations of violations have been made, you should immediately investigate the alleged condition(s) and make any necessary corrections or modifications within ten (10) calendar days from receipt of this letter. Please advise me in writing of your findings and of the action(s) you have taken. Your response should be detailed, stating specifically what action(s) you have taken to abate described conditions.

This letter is not a citation, nor is it a notification of any proposed penalties. However, if we do not receive a response from you within ten (10) days that appropriate action has been taken, an inspection may be conducted. Action taken by you in this matter will not remove your workplace from the possibility of an unannounced inspection by duly authorized representatives of the Virginia Department of Labor and Industry.

You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by all of your employees, for three (3) working days. A copy of your response may be forwarded to the complainant.

If you have any questions concerning this matter, please contact this office. Your personal support and interest in the safety and health of your employees is appreciated.

Sincerely,

VOSH Compliance Manager